

**STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER**

**IN THE MATTER OF:**

**CHARLTON HILDRETH**

**DOCKET NO. 03.06-102666J**

**ORDER**

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **August 7, 2009**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION  
WILLIAM R. SNODGRASS TOWER  
312 EIGHTH AVENUE NORTH, 8<sup>th</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-0307

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER**

**IN THE MATTER OF:**

**Tennessee Department of  
Financial Institutions,  
Compliance Division  
Petitioner,**

**DOCKET NO: 03.06-102666J  
TDFI No. 09-40-C**

**Vs.**

**Charlton Hildreth  
Respondent.**

**ORDER OF DEFAULT AND INITIAL ORDER**

This matter came to be heard on June 24, 2009 (06/24/09), at nine o'clock (9:00) a.m., central time, at the offices of the Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Bank of America Building, Nashville, Tennessee 37219, before Administrative Judge Steve R. Darnell, assigned to the Administrative Procedures Division of the Tennessee Department of State, and sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter "Commissioner"), pursuant to Tennessee Code Annotated Section (hereinafter "TENN. CODE ANN. §") 4-5-301(d).

The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter "Petitioner") was represented by Joseph A. Schmidt, Staff Attorney with the Tennessee Department of Financial Institutions (hereinafter "Department"). Charlton F. Hildreth (hereinafter "Respondent") was not present at the contested case hearing and was not represented by legal counsel.

### **ORDER OF DEFAULT**

The record demonstrates that the Petitioner served the Respondent, via United States Certified Mail, Return Receipt Requested, with a "Notice of Charges and Opportunity for Hearing" on March 27, 2009 (03/27/09). Additionally, the record demonstrates that an order was entered on May 6, 2009 (05/06/09), setting this matter for hearing on June 24, 2009 (06/24/09), at nine o'clock (9:00) a.m., central time, at the offices of the Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Bank of America Building, Nashville, Tennessee 37219. The aforementioned Order was mailed to the Petitioner and to the Respondent at their addresses of record on file with the Administrative Procedures Division. In light of the foregoing, legal counsel for the Petitioner made an oral motion to hold the Respondent in default and to continue on an uncontested basis pursuant to TENN. CODE ANN. § 4-5-309 and Rule 1360-4-1.15. Petitioner's motion was granted, and it is **ORDERED** that Respondent is held in default for failing to appear after due notice. Petitioner elected to proceed with this hearing uncontested.

### **NOTICE OF DEFAULT**

**NOTICE IS HEREBY GIVEN GRIEVANT THAT GRIEVANT HAS BEEN HELD IN DEFAULT FOR FAILURE TO APPEAR AT A HEARING ON THE MERITS AFTER RECEIVING ADEQUATE NOTICE. T.C.A. §4-5-309. GRIEVANT HAS 15 DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, 312 8TH AVENUE NORTH, 8TH FLOOR, WILLIAM R. SNODGRASS TOWER, NASHVILLE, TENNESSEE 37243. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS TO JUSTIFY THE GRIEVANT'S FAILURE TO APPEAR. IF GRIEVANT DOES NOT REQUEST THE DEFAULT BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW.**

## **INITIAL ORDER**

This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, initiated by the Petitioner and seeking an Initial Order barring the Respondent from any position of management, control, employment or providing services for any licensee or registrant or other person subject to the Commissioner's jurisdiction, prohibiting the Respondent from participating in any business activity of a registrant or licensee, and prohibiting the Respondent from engaging in any business activity on the premises where a registrant or licensee is conducting its business pursuant to TENN. CODE ANN. § 45-13-121 of the "Tennessee Residential Lending, Brokerage and Servicing Act of 1988" (hereinafter "Mortgage Act").

After consideration of the pleadings, argument of counsel, and the record as a whole, it is the determination of this Administrative Judge that an Initial Order should be entered GRANTING the Petitioner the relief requested in the "Notice of Charges and Opportunity for Hearing." This conclusion is based upon the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. TENN. CODE ANN. § 45-1-104 provides that the Department is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions).
2. The Commissioner is responsible for the administration, enforcement, and interpretation of the Mortgage Act, TENN. CODE ANN. §§ 45-13-101, *et seq.*, and any rules promulgated pursuant to the Mortgage Act.
3. The Petitioner is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Mortgage Act.

4. The Respondent is a natural person with a last known address of 5009 Will Fall Road, Arlington, Tennessee 38002.

5. The Respondent was issued a registration certificate (registration certificate number 47711) by the Commissioner to lawfully engage in the business of mortgage loan origination on or about February 20, 2008 (02/20/08). At the time of issuance, the Respondent was registered in affiliation with a registered mortgage loan broker and mortgage loan servicer named Southwest Funding, L.P. (registration number 1863). Southwest Funding, L.P. terminated its affiliation with the Respondent effective March 16, 2009 (03/16/09).

6. According to a "Judgment in a Criminal Case" entered on or about June 18, 2002 (06/18/02), the Respondent pled guilty to one (1) felony count of violating 18 U.S.C. § 2113(a) (bank robbery), in the matter of *United States of America v. Charlton F. Hildreth*, Case Number 2:01cr20262-01-D, in the United States District Court, Western District of Tennessee, Memphis Division, the Honorable Bernice B. Donald, United States District Judge, presiding.

7. According to the aforementioned criminal Judgment, the Respondent's sentence was imposed on June 14, 2002 (06/14/02). Pursuant to said sentence, the Respondent was committed to the custody of the United States Bureau of Prisons for a term of fifty-one (51) months. Upon the Respondent's release from imprisonment, the Respondent was placed upon supervised release for a term of two (2) years.

8. The aforementioned criminal Judgment is reasonably related to the qualifications, functions, or duties of a person engaged in the mortgage loan business, in that the criminal Judgment demonstrates that the Respondent does not possess the requisite financial responsibility, experience, and character sufficient to warrant the belief that the Respondent will conduct himself lawfully and within the purposes of the Mortgage Act as required by TENN.

CODE ANN. § 45-13-105(a)(2)(A).

### **CONCLUSIONS OF LAW**

9. TENN. CODE ANN. § 45-13-121(a)(2)(A) of the Mortgage Act authorizes the Commissioner to bar a person “[i]f the criminal, civil or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this chapter...” and the person has been “...convicted of or pled guilty to or pled nolo contendere to any crime.”

10. TENN. CODE ANN. § 45-13-121(b) of the Mortgage Act states, in pertinent part, that “[p]ersons suspended or barred under this section are prohibited from participating in any business activity of a registrant or licensee and from engaging in any business activity on the premises where a registrant or licensee is conducting its business....”

11. TENN. CODE ANN. § 45-13-121(c) of the Mortgage Act states that “[t]his section shall apply to any violation, conviction, plea, or judgment after July 1, 2001.”

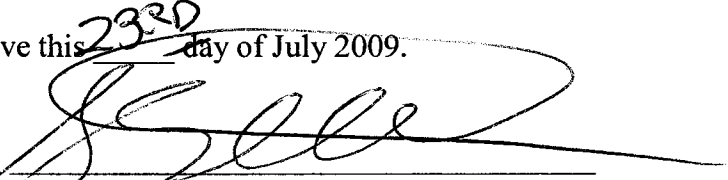
12. The factual allegations as stated in paragraphs one (1) through eight (8), incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent was convicted of or pled guilty to or pled nolo contendere to a crime that is reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of the Mortgage Act.

13. The factual allegations as stated in paragraphs one (1) through eight (8), incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent should be barred from any position of management, control, employment or providing services for any licensee or registrant or other person subject to the Commissioner’s jurisdiction, prohibited from participating in any business

activity of a registrant or licensee, and prohibited from engaging in any business activity on the premises where a registrant or licensee is conducting its business pursuant to TENN. CODE ANN. § 45-13-121 of the Mortgage Act.


**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Petitioner has proven by a preponderance of the evidence that the Respondent was convicted of or pled guilty to or pled nolo contendere to a crime that is reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of the Mortgage Act. Consequently, the Respondent is hereby **BARRED** from any position of management, control, employment or providing services for any licensee or registrant or other person subject to the Commissioner's jurisdiction, is hereby **PROHIBITED** from participating in any business activity of a registrant or licensee, and is hereby **PROHIBITED** from engaging in any business activity on the premises where a registrant or licensee is conducting its business pursuant to TENN. CODE ANN. § 45-13-121 of the Mortgage Act.

This Initial Order entered and effective this 23<sup>RD</sup> day of July 2009.



Steve R. Darnell  
Administrative Judge

Filed in the Administrative Procedures Division this 23<sup>RD</sup> day of July 2009.



Thomas G. Stovall, Director  
Administrative Procedures Division

## **APPENDIX A TO INITIAL ORDER**

### **NOTICE OF APPEAL PROCEDURES**

#### **Review of Initial Order**

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8<sup>th</sup> Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

#### **Review of Final Order**

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

### **YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.